IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHAD E. DEAMOND,	)	
	)	
Appellant,	)	**C.A. No. N10A-03-018 DCS**
	)	
v.	)	
	)	
GPM INVESTMENTS, LLC and the UNEMPLOYMENT INSURANCE APPEAL BOARD,	)	
	)	
Appellees.	)	
	)	

Submitted: November 15, 2010
Decided: February 11, 2011

On Appeal from a Decision of the Unemployment Insurance Appeal Board.
REMANDED.

ORDER

Chad E. Deamond, pro se, Appellant.

Sarah E. DiLuzio, Esquire, Wilmington, Delaware,
Attorney for Appellee, GPM Investments, LLC.

Phillip G. Johnson, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for Appellee, the Unemployment Insurance Appeal Board.

STREETT, J.

This 11th day of February, 2011, upon consideration of Appellant's appeal from a decision on the Unemployment Insurance Appeal Board ("the Board"), it appears to the Court that:

FACTS

Appellant Chad Deamond worked for Appellee GPM Investments, LLC ("GPM") as a field dispatcher from March, 2007 until March 4, 2009 when GPM informed Appellant that his position was being eliminated. [1] As an alternative to being laid off, GPM offered Appellant the chance to accept a new position in maintenance.[2] Though he knew his pay would be reduced, Appellant claims that he accepted the maintenance position because he was told it would be similar to his previous work;[3] however, upon starting the job, Appellant discovered that the hours were longer than he anticipated,[4] the pay was much lower,[5] and he had to be "on call" 24 hours a day. [6]

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[1] Record at 15.

[2] Record at 15 – 16.

[3] Record at 35.

[4] Record at 1, 16 – 17. Appellant claims he worked 55 hours per week in the maintenance position.

[5] Record at 17, 39 – 40. Appellant claims his pay was reduced from approximately $44,000 per year to $39,000. He further argues that he was unaware he would be paid a salary and not hourly wages until after he accepted the maintenance position.

[6] Record at 16 – 17, 35.

Appellant worked in maintenance from March 4, 2009 until September 3, 2009 after giving his employer two weeks notice.[7] During the four months that Appellant remained in the maintenance position, he says he complained to his supervisor on numerous occasions about his issues with his job.[8] Moreover, in addition to the long hours and constantly being "on call," Appellant felt that he did not receive adequate support or training from GPM.[9] Appellant also maintains that GPM never paid him for overtime work.[10]

Appellant also claims that he became stressed by the heavy workload, experienced headaches and had trouble sleeping.[11] Although he told his supervisor about these problems, he never provided any medical documentation to his employer or the UIAB.[12] Appellant said he did not contact human resources because that office was based in Virginia and he

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[7] Record at 15 – 16, 18 – 19.

[8] Record at 36.

[9] Record at 17.

[10] Record at 17, 21; *see also* Appellant's Op. Br. at 2. Appellant, on appeal from the UIAB decision, submitted a U.S. Department of Labor Receipt for Payment of Lost or Denied Wages dated June 3, 2010 in the amount of $1,487.50 as proof of GPM's failure to pay him overtime.

[11] Record at 1, 18, 36.

[12] Record at 36.

had been directed to discuss problems with his immediate supervisor.[13] Appellant also did not report his problems to his regional manager, who occasionally visited the Delaware office.[14] Worried that the job was affecting his health, Appellant gave his supervisor two weeks notice and stopped working for GPM on September 3, 2009.[15]

PROCEDURAL HISTORY

Appellant filed a claim for unemployment benefits on September 4, 2009, the day after he quit.[16] On September 22, 2009, the Claims Deputy issued a decision that Appellant was disqualified from receiving unemployment benefits because he voluntarily quit his job for personal reasons.[17]

On September 28, 2009, Appellant filed a timely appeal of the Claims Deputy's decision.[18] A hearing was held on October 26, 2009 before the Appeals Referee, and on October 27, 2009, the Referee issued a decision in

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[13] Record at 36.

[14] Record at 38 – 39.

[15] Record at 18 – 19.

[16] Record at 1.

[17] Record at 5.

[18] Record at 6 – 7.

favor of GPM.[19] The Referee found that Appellant voluntarily left his work without good cause based on the fact that Appellant failed to report his complaints to human resources, failed to present any medical documentation indicating that he was advised to quit his job due to health reasons, and failed to demonstrate that his work conditions had become so intolerable that he had good cause to quit.[20]

Appellant filed an appeal with the Unemployment Insurance Appeal Board ("the UIAB") on November 2, 2009.[21] The UIAB held a hearing on January 13, 2010 at which Appellant was present.[22] Though GMP received notice of the hearing, they did not appear to defend the appeal.[23] The Referee's decision was affirmed by the UIAB on March 26, 2010.[24] The UIAB found that Appellant voluntarily quit without good cause and was disqualified from receiving unemployment benefits because he reasonably should have known that there would be differences between his former

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[19] Record at 9 – 11.

[20] Record at 11.

[21] Record at 21.

[22] Record at 32.

[23] Record at 32.

[24] Record at 24.

position and the maintenance job and because he failed to exhaust his available administrative remedies prior to quitting.[25]

On March 31, 2010, Appellant filed his appeal with this Court.[26] Appellant's notice of appeal states four grounds: "(1) The UIAB incorrectly concluded the job I was offered by GPM was similar to my job that was eliminated; (2) The UIAM [sic] failed to address that GPM classified me as a salaried employee to avoid paying me overtime; (3) The UIAM [sic] did not consider that I did not receive proper training for my new position; [and] (4) The UIAM [sic] failed to recognize I was never advised I had a right to complain or appeal to GPM's Human Resources Department."[27] In his opening brief dated October 7, 2010, Appellant further argues that "GPM Investments, LLC refused to pay me overtime at my new position until the U.S. Department of Labor required them to do so in the amount of $1,487.50."[28] For these reasons, Appellant contends that he has established good cause for quitting and should be entitled to receive benefits.

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[25] Record at 24.

[26] Record at 44.

[27] Record at 45.

[28] Appellant's Op. Br. at 1; *see also* Appellants Rep. Br. at 1. Appellant reasserted his position that GPM's failure to pay him overtime established good cause for his resignation in his Reply Brief on appeal to this Court, filed on November 15, 2010.

In its reply brief, GPM argues that the Appellant quit his job voluntarily due to job dissatisfaction, which "is not good cause for resignation and does not entitle a claimant to unemployment benefits."[29] Additionally, GPM contends that "[t]he unemployment insurance fund was not designed to supplement the income of people who simply choose not to work."[30]

STANDARD OF REVIEW

The Superior Court's review of Board decisions is "limited to a determination of whether the Board's decision is supported by substantial evidence and free from legal error."[31] "When reviewing a decision on appeal from an agency, the Superior Court does not weigh the evidence, determine questions of credibility, or make its own factual findings."[32]

In determining whether substantial evidence exists to support the Board's decision, this Court must view the record in the light most favorable to the prevailing party.[33] "Even if this Court might have reached a different

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[29] Appellee's Ans. Br. at 3 (citing *O'Neal's Bus Service, Inc. v. Employment Security Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).

[30] Appellee's Ans. Br. at 3.

[31] *Broadnax v. West End Neighborhood* House, 2010 WL 740523, at *2 (Del. Super. March 2, 2010)(citing Starkey *v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del. Super. 1975)).

[32] *Broadnax*, at *2 (citing *Holowka v. New Castle County Bd. of Adjustment*, 2003 WL 21001026, at *3 (Del. Super. April 15, 2003)).

conclusion than the Board in the first instance, a decision of the Board must be affirmed if it is supported by substantial evidence and is free from legal error."[34]

DISCUSSION

Pursuant to 19 *Del. C.* §3314(1), a person is not entitled to unemployment benefits if that person resigns from a job voluntarily without good cause. "Good cause" is "such cause as would justify one in voluntarily leaving the ranks of the employed and joining the ranks of the unemployed."[35] "The good cause for voluntarily leaving employment must be for reasons connected with the employment and not for personal reasons."[36] Undesirable or unsafe working conditions alone do not give rise to good cause for leaving employment and, when faced with such issues, an employee must "do something akin to exhausting his administrative remedies" before quitting.[37] The employee need not exhaust all remedies,

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[33] *Bromwell v. Chrysler LLC*, 2001 WL 4513086, at *3 (Del. Super. Oct. 28, 2010)(citing *E.I. DuPont De Nemours & Co. v. Faupel*, 859 A.2d 1042, 1046-47 (Del. Super. 2004)).

[34] *Bromwell*, at *2 (citing *Brogan v. Value City Furniture*, 2002 WL 499721, at *2 (Del. Super. March 27, 2002)).

[35] *O'Neal's Bus Service, Inc. v. Employment Security Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970) (citing *Zielenski v. Board of Review*, 203 A.2d 635 (N.J. Super. 1964)).

[36] *Baaden v. Amer Industrial*, 2010 WL 1854133, at *2 (Del. Super. April 27, 2010).

[37] *O'Neal's Bus Service, Inc. v. Employment Security Comm'n*, 269 A.2d 247, 249 (Del. Super. 1970).

but must at least make a good faith effort to inform the employer of resolvable problems.[38] Good cause can include a substantial reduction in wages, work hours or a substantial deviation in the working conditions from the original agreement of hire to the employee's detriment.[39]

The burden to demonstrate good cause is on Appellant.[40] Determinations of good cause are questions of law within the UIAB's discretion, and the UIAB's decision will be upheld absent abuse of that discretion.

Here, Appellant's first ground for his appeal, that the UIAB erred in concluding that his maintenance position was similar to his previous field dispatcher job, is without merit. The UIAB did not conclude that the two positions were similar; rather, they reasoned that Appellant should have reasonably anticipated some degree of difference between the two positions (and, indeed, Appellant acknowledged that he knew that his pay would be reduced). The record indicates that the UIAB considered that the conditions of Appellant's new job may have deviated from his understanding of his original employment agreement with GPM; however, the UIAB determined

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[38] *Dove v. MHL Refrigeration, Inc.*, 1995 WL 162097, at *3 (Del. Super. March 31, 1995).

[39] *Miller v. Mattress Warehouse, Inc.*, 2008 WL 3892208, at *2 (Del. Super. Aug. 20, 2008) (quoting *Weathersby v. Unemployment Ins. App. Bd.*, 1995 WL 465326, at*5 (Del. Super. June 29, 1995)).

[40] *Baaden v. Amer Industrial*, 2010 WL 1854133, at *3 (Del. Super. April 27, 2010).

that these deviations were not substantial, but instead were the kind that could be reasonably anticipated. The Court sees no error in this determination.

Two of Appellant's additional arguments on appeal are that GPM failed to properly train him for his new position and that GPM failed to advise him of his right to complain or appeal to human resources. Aside from his testimony, Appellant offered no additional evidence to support these allegations. The UIAB, upon consideration of Appellant's testimony as to these issues, found that they did not give rise to good cause. Absent evidence to the contrary, this Court finds no abuse of discretion.

Appellant's final argument on appeal is that the UIAB failed to address that GPM classified him as a salaried employee to avoid paying him overtime.[41] Appellant testified that his pay was reduced from approximately $44,000 per year to $39,000 and that he was unaware that he would be paid a salary and not hourly wages until after he accepted the maintenance position.[42] Additionally, the record reflects that Appellant raised this overtime issue in his notice of appeal to the UIAB dated November 2, 2009 and again at the January 13, 2010 hearing; however, the UIAB characterized

[41] The record is silent as to whether Appellant was a salaried or hourly worker prior to reclassification as a maintenance worker.

[42] Record at 17, 39 – 40.

this issue as a pay discrepancy and did not consider it as a possible basis for good cause.[43] In further support of his contention that GPM failed to pay him overtime, Appellant subsequently submitted a U.S. Department of Labor Receipt for Payment of Lost or Denied Wages dated June 3, 2010 in the amount of $1,487.50 with his Opening Brief to this Court.[44]

An Appellant generally may not enlarge the record on appeal by submitting new evidence.[45] However, if the Court determines that additional evidence is needed to complete the record, it must remand the case to the agency for further proceedings.[46] Here, in view of the fact that the U.S. Department of Labor receipt is dated approximately five months after the UIAB hearing, Appellant could not have introduced this evidence at the hearing to support his overtime claim.

When reviewing decisions of the UIAB, the Administrative Procedures Act mandates that "the appeal shall be on the record without a trial *de novo*."[47] However, the Court recognizes that failure to pay an employee for overtime is both unreasonable and contrary to federal law.[48]

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[43] Record at 37.

[44] Appellant's Op. Br. at 2.

[45] *Petty v. Univ. of Delaware*, 450 A.2d 392, 395 (Del. 1982)

[46] 29 *Del. C.* § 10142(c).

[47] 29 *Del. C.* § 10142(c).

Moreover, "[a] substantial reduction in an employee's wage or pay constitutes a compelling and necessitous reason for voluntarily terminating employment."[49] For these reasons, the UIAB should conduct an additional hearing to develop the facts surrounding GPM's failure to pay Appellant $1,487.50 in due overtime wages, which may have been related to or contributed to the change in his salary, and whether it was good cause for Appellant's resignation.

CONCLUSION

For the foregoing reasons, this Court hereby remands this case to the UIAB for further proceedings on the record.

IT IS SO ORDERED.

/s *Diane Clarke Streett*
Diane Clarke Streett
Judge

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[48] *Sandefur v. Unemployment Ins. Appeals Bd.*, 1993 WL 389217, at * 4 (Del. Super. Aug. 27, 1993)(citing 29 U.S.C.A. § 206 (1978 & Supp. 1993)).

[49] *Sandefur v. Unemployment Ins. Appeals Bd.*, 1993 WL 389217, at * 4 (Del. Super. Aug. 27, 1993).